

Atty. Docket No. 569.005

**REMARKS**

In the Office Action dated March 6, 2006, pending Claims 1-38 were rejected and the rejection made final. In response Applicants have filed herewith a Request for Continued Examination and have cancelled Claims 1-38 and presented new Claims 39-76. Applicants intend no change in the scope of the claims by the changes made by this amendment. It should be noted these amendments are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution.

Applicant and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Examiner is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the foregoing amendments and the following remarks.

**Rejection under 35 U.S.C. § 112, 1st paragraph:**

Claims 1-38 were rejected for reciting limitations that the Examiner considered new matter under 35 U.S.C. § 112, 1<sup>st</sup> paragraph. Specifically, the Examiner asserted that the claim language "wherein said one suggested menu is associated with at least one predetermined diet" in the independent claims was new matter and not properly supported by the Application, as filed.

Applicant has canceled claims 1-38 and put forth new claims 39-76 for consideration. None of new claims 39-76 recite the claim language objected to by the Examiner. Applicant respectfully submits that claims 39-76 are fully supported by the

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Application as filed under MPEP § 2163 *et seq.* Applicant respectfully requests that the Examiner withdraw the rejection for new matter under 35 U.S.C. § 112, 1<sup>st</sup> paragraph.

**Rejections under 35 U.S.C. § 103(a) over Kolawa in view of Froseth:**

Claims 1-38 stood rejected as being unpatentable over U.S. Patent 6,370,513 to Kolawa et al. (hereinafter Kolawa) in view of U.S. Published Application 2002/0004749 of Froseth et al. (hereinafter Froseth) under 35 U.S.C. § 103(a).

As indicated above claims 1-38 have been canceled and new claims 39-76. The following remarks are directed towards the allowability of claims 39-76 over the Kolawa and Froseth references themselves and in combination.

Applicant respectfully submits that in order to establish a *prima facie* case of obviousness three criteria must be met. First, must be some suggestion or motivation to modify a reference or combine reference teachings, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Second, the modification or combination must have some reasonable expectation of success. Third, the prior reference or combined references must teach or suggest all the claim limitations. MPEP § 2143. The teachings of a prior art reference must be considered as a whole including those portions that would lead away from the claimed invention. MPEP § 2141.02(VI).

With regards to independent claims 39, 62, and 76, neither Kolawa nor Froseth, nor any combination of those references teach or suggest all the claimed limitations.

As best understood, Kolawa teaches a method and apparatus for automated selection, organization, and recommendation of items. The system of Kolawa operates to provide daily menus to users on the basis of a user's particular food tastes and current food supply. This allows a user to prepare for meals ahead of time and limit the amount of food that needs to be stored at any given time.

Kolawa does teach that the system may be used by a dietician to set up menus for clients/patients however the system is not geared towards facilitating food service management in a health care facility, rather Kolawa teaches a system for managing food and menus in the home.

Kolawa does not contain any teachings regarding the establishment of a standard set of **therapeutic** diet types. Rather Kolawa only provides menu options based upon a user's food tastes.

Kolawa contains no teachings regarding obtaining of nutritional data on food items used in recipes. Kolawa does not teach evaluating nutritional content of food items, verifying nutritional values of recipes, assigning food attributes, and then shaping and suggesting menu sets for a given therapeutic diet type. Nor does Kolawa teach making nutritional information associated with the menu sets available to food service professionals. Rather menus are suggested solely on the basis of a user's taste preferences.

Kolawa (Col. 13, Line 66 to Col. 14, Line 59), does appear to teach a user inventory subsystem that helps a user track the inventory of food items in the home so that the user can remain up to date about food supplies in the home and what items need

to be replaced. But Kolawa does not teach tracking food inventory at a **health care facility**. The teachings of Kolawa in this regard are inapplicable to tracking inventory at a **health care facility** as such inventory keeping is much more complex. Health care facilities provide food supplies for a large number of people as opposed to just a household, the amount and variety of food supplies is much greater, and health care facilities receive and expend food supplies at a much higher rate than a household would.

As best understood, Froseth appears to teach a customized food selection, ordering and distribution system and method. Generally, Froseth relates user customization of cereal products and other food products based on a purchaser's particular tastes, dietary needs, and budget. Froseth does appear to teach that the system may be utilized by dietitians/nutritionists to prescribe certain customized products to clients/patients. But the system is not established for facilitating food management at a health care facility.

The system of Froseth does take diet types into account and assists users in planning menus based upon a users' particular health concerns and dietary needs ([0175]-[0180]). Froseth also appears to teach providing nutritional information on various customized food products (Figures 13A & 14).

Froseth, however, fails to teach the claimed subject matter. Froseth does not teach the establishment of a standard set of therapeutic diet types, and shaping and suggesting **menu sets for each therapeutic diet type** to food service professionals associated with a healthcare facilities based upon nutritional content and values in a particular menu set. Rather, Froseth merely teaches assisting a user in planning menus

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and food selection based upon health and dietary concerns. Moreover, the nutritional information provided by Froseth is with regards to a specific customized food item. Froseth does not teach making available nutritional information for a menu set.

Froseth also fails to teach tracking an inventory of food items at a health care facility.

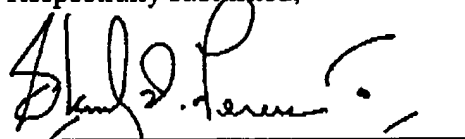
The combination of Kolawa and Froseth also fails to teach the claimed limitations as neither reference teaches: “establishing a standard set of therapeutic diet types;” “verifying a nutritional value of each of [a] plurality of recipes;” “shaping menu sets of said recipes for each of said therapeutic diet types . . . based upon . . . assigned food attributes;” “suggesting menu sets . . . based upon [selected] therapeutic diet types;” “making nutritional information associated with said menu sets available;” and “tracking an inventory of food items at [a] health care facility.” Any rejection of claims 39, 62, and 76 based upon Kolawa and Froseth under 35 U.S.C. § 103(a) would therefore be improper.

For the foregoing reasons, Applicant respectfully submits that independent claims 39, 62, and 76 are allowable over Kolawa and Froseth. By virtue of their dependence upon claims 39 and 62 Applicant also respectfully submits that dependent claims 40-61 and 63-75 are also allowable over Kolawa and Froseth.

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In summary, it is respectfully submitted that the instant application, including Claims 39-76, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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